IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELALTE SIDE

WRIT PETITION NO.3871 OF 2006

Jaysing Shamrao Pathare. ...Petitioner.

Vs.

Kerba Baburao Purekar (Kumbhar) & Ors..Respondents.

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Mr.A.M.Kulkarni for the Petitioner.

Mr.Amit Borkar for the Respondents.

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CORAM : DR.D.Y.CHANDRACHUD, J.

June 13, 2006.

P.C. :

A decree for eviction was passed against the original Plaintiff. In the Writ Petition filed before this Court to impugn the judgment and order decreeing the suit for eviction (W.P. 2343 of 2004), the Petitioner before this Court in those proceedings was granted time to vacate the third floor of the suit premises till 22nd July 2004 and the ground floor till 30th May 2005. The Petitioner before this Court in the earlier

proceedings did not file an undertaking as required. Her sons moved a third party application for claiming possession of the suit property. The objection was dismissed on merits. The appeal was also dismissed on merits. Thereafter, it appears that the Petitioner herein has set up an obstruction to the execution of the decree relying upon an alleged agreement dated 5th December 1984. The Learned Trial Judge has noted that the agreement, Exh.17/5, clearly shows that the Petitioner shall not raise any claim even as a sub-tenant of the suit property. Moreover, the agreement was entered into on 5th December 1984 during the life time of the original tenant by his daughter-in-law. The Trial Court, was justified in concluding that during the life time of the original tenant, the daughter-in-law could not have executed such an agreement. The application filed by the Petitioner was a patent abuse of the process of the Court and, therefore, was correctly rejected. The First Appellate Court is in the circumstances, justified in declining the prayer for stay. There is no merit in the Petition which is accordingly dismissed.

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